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OFFICE OF PETITIONS

In re Application	:	
Chesnut et al.	:	
Application No. 09/935,280	:	DECISION ON APPLICATION
Filed: August 21, 2001	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. INVIT1300-1	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(b)," filed February 7, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred sixty-four (164) days to one hundred seventy-two (172) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance was one hundred seventy-two (**172**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 19, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 164 days. On February 7, 2005, applicants timely¹ submitted an application for patent term adjustment. Applicants request reinstatement of 8 days due to the delay of the response mailed November 27, 2001 to reach OIPE resulting from the consequences of events of September 11, 2001 on domestic first class mail delivery at the U.S. Postal Service.

¹ PALM records show that the Issue Fee payment was also received in the Office on February 7, 2005.

It appears that the patent issuing from the application is not subject to a terminal disclaimer.

Applicants' arguments are well-taken. The Notice dated January 15, 2002, provided that:

If a reply to an Office action or notice was mailed on or after October 13, 2001 and no later than December 1, 2001 (as shown on a certificate of mailing under 37 CFR 1.8), and the applicant is otherwise entitled to patent term adjustment (or additional patent term adjustment) but for the fact that there was a reduction of such patent term adjustment under 35 U.S.C. 154(b)(2)(C)(ii) and 37 CFR 1.704(b) due to the receipt of such reply by the Office more than three business days after the date indicated on the certificate of mailing, the Office will consider the USPS mail situation discussed in this notice to constitute a sufficient showing that, in spite of all due care, the applicant was unable to reply to the Office action or notice within three months of the date of mailing of the Office action or notice. In this situation, the Office will, subject to the conditions set forth below, reinstate a period equal to the period beginning on the date that is four business days after the date indicated on the certificate of mailing on the reply and the date of receipt (37 CFR 1.6) of the reply in the Office up to a maximum of three months.

The relevant reply was mailed on November 27, 2001, as shown by the certificate of mailing under § 1.8 thereon. However, the patent term adjustment was reduced by 8 days because the reply was not received in the Office until January 10, 2002.

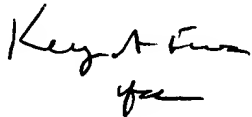
Thus, it is concluded that the Notice dated January 15, 2002 is applicable to this situation; in spite of all due care, the applicants were unable to reply to the Notice to File Missing Parts within three months of the date of mailing of the notice, October 2, 2001. It is further concluded that applicants have met the other conditions set forth in the Notice for reinstatement of patent term. In this instance, the period of reinstatement is from December 4, 2001, the day that is four business days after November 27, 2001, to January 10, 2002, the date of receipt of the reply. This period constitutes more than 8 days, and thus, applicants are entitled to reinstatement of the entire period of reduction of 8 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is one hundred seventy-two (172) days.

It is further noted that applicants have met the requirements set forth in the Notice for waiver of the fee for consideration under 37 CFR § 1.705. Accordingly, the \$200 fee submitted is being refunded to Deposit Account No. 07-1896, as authorized.

The Office will forward the file to the Office of Patent Publication so that the patent can be issued.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Karin Ferriter", with a small flourish underneath.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Attachment: Copy of Revised PAIR Screen